

1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY
2 BRANCH I

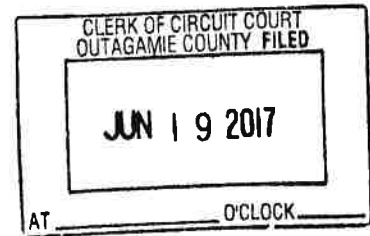
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4 STATE OF WISCONSIN, Transcript of:
5 Plaintiff, MOTION HEARING

6 -vs-

ORIGINAL

7 BRIAN D. MITCHELL, Case No. 17-CF-59
8 Defendant.

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10 HONORABLE MARK J. MCGINNIS
11 JUDGE PRESIDING



17 APPEARANCES:

18 KYLE SARGENT, Assistant District Attorney, 320
19 South Walnut Street, Appleton, Wisconsin 54911, appearing
on behalf of the plaintiff.

20 DANIEL M. MUZA, Reff, Baivier, Birmingham &
21 Lim, S.C., 217 Ceape Avenue, Oshkosh, Wisconsin 54903,
appearing on behalf of the defendant.

22 The Defendant appeared in person.

23

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25 Date of proceedings: June 6, 2017

1 TRANSCRIPT OF PROCEEDINGS

2 THE COURT: We'll go on the record,
3 17-CF-59, State of Wisconsin versus Brian Mitchell.
4 Mr. Mitchell is here with Attorney Muza. Attorney
5 Sargent is here on behalf of the State.

6 I think the first issue is this motion to
7 withdraw. I received your paperwork, Mr. Muza.
8 Mr. Mitchell, do you have any objection to that?

9 THE DEFENDANT: To him withdrawing?

10 THE COURT: Correct.

11 THE DEFENDANT: No.

12 THE COURT: Who are you going to have
13 represent you?

14 THE DEFENDANT: The SPD is working on
15 appointing counsel currently.

16 THE COURT: Okay. Do you agree with that,
17 Mr. Muza?

18 MR. MUZA: That's nothing that I know of.
19 Procedurally it's my understanding they have to
20 obtain the order, which once I do I will provide
21 that to the SPD forthwith.

22 THE COURT: Okay. Mr. Sargent, anything
23 you want to say regarding that issue?

24 MR. SARGENT: No, sir.

25 THE COURT: Mr. Muza, do you have an order

1 for me to sign?

2 MR. MUZA: I will have to separately
3 submit that. I thought I provided that. I do.

4 THE COURT: If you want to, bring that up
5 and actually it looks like I signed an order on
6 May 22.

7 MR. MUZA: It may have been for prior
8 counsel, judge. I was just --

9 THE COURT: No. It was for you, but I
10 think what I said was hold onto it until this
11 hearing.

12 MR. MUZA: Very well.

13 THE COURT: I must have otherwise this
14 hearing would have been taken off. One question
15 before we -- We need to address the demand for
16 speedy trial, Mr. Muza. What is your client's
17 position regarding that demand given the fact that
18 he's in agreement that you withdraw from this matter
19 and we all know it's not going to be tried.

20 MR. MUZA: I do not know the answer to
21 that. I believe you will have to take that up
22 directly with him. I know that this matter was
23 scheduled for Wednesday, August 16, for a jury trial
24 while I was counsel of record.

25 THE COURT: Mr. Mitchell, I don't know if

1 you understood what I just said.

2 THE DEFENDANT: Yes.

3 THE COURT: We have a trial scheduled in
4 August.

5 THE DEFENDANT: Absolutely.

6 THE COURT: My plan would be that we will
7 keep it scheduled.

8 THE DEFENDANT: Absolutely.

9 THE COURT: And then we'll put it on for a
10 status conference in a couple weeks; but when a new
11 attorney gets appointed, that attorney might be in
12 here saying they are not going to be ready by
13 August.

14 THE DEFENDANT: I highly understand.

15 THE COURT: I'm not done talking yet.
16 They might say they're not going to be done by
17 August. They are not going to be prepared. They
18 might have to do additional work. They're
19 scheduled. They are on vacation, whatever it is.
20 There is a likelihood, a good likelihood, that that
21 case will need to be rescheduled and pushed to a
22 later date. Do you understand that?

23 THE DEFENDANT: Yes. I -- I will feel
24 that's a conflict.

25 THE COURT: I'm not sure what that means.

1 THE DEFENDANT: I would like it at the
2 earliest convenience on the calendar date, my jury
3 trial. I want to, I intend, will exercise my right
4 to exercise a speedy trial. If my attorney can't
5 cooperate with that, it's a conflict of my interest.

6 THE COURT: How come it's a conflict of
7 your interest?

8 THE DEFENDANT: I want my jury trial at
9 the earliest convenience on the calendar. I'm just
10 exercising my right to a speedy trial.

11 THE COURT: There's also a right to have
12 effective assistance of counsel.

13 THE DEFENDANT: Absolutely.

14 THE COURT: And if your attorney is on
15 vacation, for example, on that date --

16 THE DEFENDANT: I understand that.

17 THE COURT: You must not.

18 THE DEFENDANT: I can sign a stipulation
19 with my attorney, I mean, saying that I understand
20 that it will probably put them in less effective --
21 It wouldn't put me in the best defense, but that's
22 just my decision. Me and my attorney could probably
23 come to some type of an agreement on that.

24 THE COURT: You're obviously very
25 confused. That's probably one of the reasons

1 Mr. Muza is withdrawing.

2 THE DEFENDANT: No. I -- I asked him to.

3 THE COURT: It wasn't a question for you.

4 Okay. So you use terms that don't make sense, which

5 is okay. Then when we try to explain things to you,

6 you appear or you seem to want to know everything;

7 and then you seem to make more comments that don't

8 make sense. So I'm not interested in trying to

9 really have a conversation with you where you and I

10 both agree.

11 THE DEFENDANT: Me neither. Me neither.

12 THE COURT: I'm just telling you the

13 reality of something.

14 THE DEFENDANT: Okay.

15 THE COURT: Okay. I want you to

16 understand today.

17 THE DEFENDANT: I understood that already.

18 THE COURT: I wasn't done asking the

19 question. For some reason you have a problem with

20 interrupting people when they are talking. You can

21 roll your eyes. It's really impressive.

22 THE DEFENDANT: You have a problem the way

23 you talk to people.

24 THE COURT: Okay, good. Someday I'm going

25 to sentence you.

1 THE DEFENDANT: Probably.

2 THE COURT: That's going to be a
3 problem --

4 THE DEFENDANT: Maybe.

5 THE COURT: -- for you that day.

6 THE DEFENDANT: Maybe.

7 THE COURT: Maybe. For your sake you'd
8 better hope it doesn't happen because I have a
9 pretty good memory and if it --

10 THE DEFENDANT: I'm innocent so I don't
11 worry about your sentencing.

12 THE COURT: You might be innocent. You
13 might not have to worry about it. That's fine.

14 THE DEFENDANT: All right then.

15 THE COURT: Are you done rolling your
16 eyes?

17 THE DEFENDANT: Are we done with the
18 withdrawal, your Honor?

19 THE COURT: No, we're not because I'm not
20 going to let him withdraw until you and I have this
21 conversation.

22 THE DEFENDANT: Okay.

23 THE COURT: Otherwise he's going to try
24 the case for you.

25 THE DEFENDANT: Proceed. Proceed.

1 THE COURT: Proceed? What do you mean?

2 THE DEFENDANT: With the hearing.

3 THE COURT: I am trying, but you are
4 interrupting and creating nonsense by rolling your
5 eyes and other antics.

6 THE DEFENDANT: That's not interrupting if
7 I am rolling your eyes. I can roll my eyes.

8 THE COURT: No, you can't roll your eyes,
9 sir. I am going to find you in contempt of court
10 for your conduct today, for the disrespect to the
11 Court. Is there anything you'd like to say before I
12 impose a consequence for that?

13 THE DEFENDANT: No.

14 THE COURT: I'm going to sentence you to
15 six months in the Outagamie County Jail in lockup.
16 That sentence begins today. You may purge that
17 contempt by writing an apology letter to me.

18 THE DEFENDANT: I will.

19 THE COURT: And, secondly, by appearing
20 here in court and making a verbal apology.

21 THE DEFENDANT: I will.

22 THE COURT: And by paying a fine of
23 \$5,000. If you purge that contempt by doing those
24 three things, then that contempt is purged and
25 you're no longer sitting. Otherwise you will sit

1 for six months in lockup. Anything on that issue,
2 sir?

3 THE DEFENDANT: No.

4 THE COURT: Okay. So you can keep rolling
5 your eyes and then I will keep giving you
6 six months, or you can grow up and handle yourself
7 the way that people are supposed to handle
8 themselves in court. Do you have any questions
9 about that?

10 THE DEFENDANT: Do I get appointed an
11 attorney? Can I?

12 THE COURT: I asked if you had any
13 questions about that?

14 THE DEFENDANT: Can I argue that?

15 THE COURT: Argue what?

16 THE DEFENDANT: The sentence you just gave
17 me, your charge.

18 THE COURT: You can do anything you want.
19 You can keep rolling your eyes if you want, like you
20 said. You told me a couple minutes ago you can roll
21 your eyes. Sure, you can go ahead and roll your
22 eyes. Then I can go ahead and do what I want to do.

23 THE DEFENDANT: Okay.

24 THE COURT: I prefer not to do it. That's
25 why I gave you the warning a couple times not to

1 roll your eyes and not to be disrespectful because I
2 think this is nonsense.

3 THE DEFENDANT: Me too.

4 THE COURT: Okay. So then knock it off.
5 Anything else regarding that contempt, Mr. Muza?

6 MR. MUZA: I have no comment whatsoever
7 with respect to the contempt.

8 THE COURT: Mr. Sargent?

9 MR. SARGENT: No, sir.

10 THE COURT: Any questions regarding the
11 contempt?

12 THE DEFENDANT: No.

13 THE COURT: Okay. Now, we're going to go
14 back to my original questions that I was asking.
15 There is a trial scheduled in mid-August. If a new
16 attorney gets appointed to this case, there is a
17 strong possibility that that trial will not be in
18 August and the reason for it -- I don't know that.
19 I am just trying to look ahead. But if that
20 attorney is on vacation, for example, or that
21 attorney comes in and says to me I can't be prepared
22 by August in order to be effective or we need to go
23 do some investigation or we need to get certain
24 witnesses and I need to do certain amounts of work
25 before the trial date, there is a strong possibility

1 or a good chance that we will need to continue that
2 trial date based upon your decision to terminate
3 Mr. Muza and ask for another lawyer. I'm not asking
4 if you agree or disagree with it, with what I just
5 said. I'm just going to ask do you understand what
6 I just said?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that when
9 that moment happens it's going to be because of your
10 decision today to terminate Mr. Muza? That's what's
11 prompting this because Mr. Muza will be ready to try
12 the case in August. We scheduled it, and I would
13 expect him to be ready. If a new attorney gets
14 appointed, I don't know what to expect from him
15 until we sit down and talk about where they are at
16 in the case and what they can reasonably get done
17 given their calendar. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: So your position today may
20 affect your speedy trial demand. Do you understand
21 that?

22 THE DEFENDANT: Understood.

23 THE COURT: Are you making that decision
24 freely, voluntarily, and intelligently?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you have any questions for
2 me concerning your speedy trial demand or your
3 request to have Attorney Muza withdraw?

4 THE DEFENDANT: No.

5 THE COURT: Okay. I will grant the
6 request, Mr. Muza. You are withdrawn from the case.
7 I am going to sign the order. It will be effective
8 today. The public defender's office will,
9 hopefully, appoint somebody soon; and we will put
10 this matter on for a status conference on June 23 at
11 10:45. At that time we'll take up with the new
12 attorney the trial date and all of the other factors
13 that need to be analyzed in terms of trying to get
14 this thing scheduled.

15 Today I am accepting Mr. Mitchell's
16 position that he is freely, voluntarily, and
17 intelligently asking that Mr. Muza be removed from
18 the case or withdrawn from the case and that he
19 understands that this request that he's making and
20 the subsequent withdrawal of Attorney Muza may
21 possibly have an impact on the dates of the trial,
22 his ability to have effective representation, and
23 ultimately may extend the trial date to a date that
24 isn't assured within it. Again, it's within
25 Mr. Mitchell's decision and he's making it freely

1 and voluntarily. Anything else on that issue,
2 Mr. Sargent?

3 MR. SARGENT: No, sir.

4 THE COURT: Anything else on that issue,
5 Mr. Muza?

6 MR. MUZA: No, your Honor. Thank you.

7 THE COURT: Mr. Mitchell?

8 THE DEFENDANT: No.

9 THE COURT: Okay. We'll see everybody on
10 June 23. We're adjourned.

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12 (Proceedings concluded.)

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STATE OF WISCONSIN)

) SS:

OUTAGAMIE COUNTY)

I, TERRA TORRES, RPR, RMR, CRR, do hereby
certify that I reported the foregoing matter and that the
foregoing transcript, consisting of 14 pages, has been
carefully compared by me with my stenographic notes as
taken by me in machine shorthand and by me thereafter
transcribed and it is a true and correct transcript of
proceedings had in said matter to the best of my
knowledge.

Dated this 15th day of June, 2017.



TERRA TORRES, RPR, RMR, CRR
Official Reporter